

Eliot A. Adelson (SBN 205284)
 James Maxwell Cooper (SBN 284054)
 KIRKLAND & ELLIS LLP
 555 California Street, 27th Floor
 San Francisco, CA 94104
 Telephone: (415) 439-1400
 Facsimile: (415) 439-1500
 Email: eadelson@kirkland.com
 Email: max.cooper@kirkland.com

James H. Mutchnik, P.C. (*pro hac vice*)
 Barack S. Echols (*pro hac vice*)
 KIRKLAND & ELLIS LLP
 300 North LaSalle
 Chicago, IL 60654
 Telephone: (312) 862-2000
 Facsimile: (312) 862-2200
 Email: jmutchnik@kirkland.com
 Email: bechols@kirkland.com

Attorneys for Defendants,
 HITACHI, LTD., HITACHI DISPLAYS, LTD.
 (n/k/a JAPAN DISPLAY INC.), HITACHI
 AMERICA, LTD., HITACHI ASIA, LTD., AND
 HITACHI ELECTRONIC DEVICES (USA), INC.

Additional Moving Defendants and Counsel Listed on Signature Pages

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT)
 ANTITRUST LITIGATION

) Master File No. 3:07-cv-05944-SC

) MDL No. 1917

 This Document Relates To:

Best Buy Co., Inc., et al. v. Hitachi, Ltd., et al., No. 11-cv-05513

Best Buy Co. Inc., et al. v. Technicolor SA, et al., No. 13-cv-05264

Sears, Roebuck and Co. and Kmart Corp. v. Technicolor SA, et al., No. 13-cv-05262

Sears, Roebuck and Co. and Kmart Corp. v. Chunghwa Picture Tubes, Ltd., et al., No. 11-cv-05514

) **DEFENDANTS' REPLY TO**
) **DEFENDANTS' MOTION IN LIMINE #5**
) **TO EXCLUDE PLEA BY SAMSUNG SDI**
) **COMPANY, LTD. AS TO NON-PLEADING**
) **DEFENDANTS OR ALTERNATIVELY TO**
) **PROVIDE A LIMITING INSTRUCTION**

) Judge: Hon. Samuel Conti
) Date: None Set
) Ctrm: 1, 17th Floor

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 *Sharp Electronics Corp., et al. v. Hitachi*)
 2 *Ltd., et al., No. 13-cv-01173*)
 3 *Sharp Electronics Corp., et al. v.*)
 4 *Koninklijke Philips Electronics., N.V., et al.,*)
 5 *No. 13-cv-02776*)
 6 *Siegel v. Hitachi, Ltd., et al. , No. 11-cv-*)
 7 *05502*)
 8 *Siegel v. Technicolor SA, et al., No. 13-cv-*)
 9 *05261*)
 10 *Target Corp. v. Chunghwa Picture Tubes,*)
 11 *Ltd., et al., No. 11-cv-05514*)
 12 *Target Corp. v. Technicolor SA, et al., No.*)
 13 *13-cv-05686*)
 14 *ViewSonic Corporation v. Chunghwa*)
 15 *Picture Tubes Ltd., et al., No. 14-cv-02510*)
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1 In their Opposition, the Direct Action Plaintiffs (“DAPs”) seek the improper admission of the
 2 guilty plea by Defendant Samsung SDI Company, Ltd. (“SDI”) regarding price-fixing of CDTs
 3 against the other Defendants in this action. Each of DAPs’ arguments regarding the relevance and
 4 admissibility of the plea is fatally flawed. (*See* DAP Opp. at 2-6).¹

5 *First*, the SDI plea is not admissible against all Defendants; rather, it may potentially be
 6 admitted only against SDI to establish those specific facts necessarily decided in the criminal action
 7 against SDI. (*See* Mot. at 2-3). DAPs rely on Fed. R. Evid. 803(22) as their basis for admitting the
 8 SDI plea as to non-pleading Defendants, citing the generic principle that evidence of a criminal
 9 conviction or plea *may* be admissible in a related civil action. (*See* DAP Opp. at 3-4). But the cases
 10 they rely on are either inapposite or support, rather than undercut, Defendants’ position here that
 11 admission of the SDI plea as against SDI’s co-defendants would be improper.

12 The first, *United States ex rel. Miller v. Bill Harbert Int’l Constr., Inc.*, 608 F.3d 871 (D.C.
 13 Cir. 2010) involved a claim of bid-rigging relating to a discrete number of government contracts
 14 involving identifiable parties, unlike the broad, non-specific conspiracy allegations Plaintiffs allege
 15 here. And even there, the D.C. Circuit Court of Appeals held that the admission of one defendant’s
 16 guilty plea in the civil case against other defendants was proper only because: (1) the trial court took
 17 steps to mitigate any prejudice by striking and redacting any references to other defendants’ names
 18 in the relevant plea documents and, significantly, (2) instructing the jury *twice* that the “fact that [one
 19 defendant] pleaded guilty *may not in any respect be considered against any other defendants, nor*
 20 *may any inference be drawn against them* by reason of [the defendant’s] plea of guilty.” *Miller*, 608
 21 F.3d at 893.

22 The other case DAPs cite is entirely inapposite. It did not involve admission of evidence at
 23 trial at all or the potential use of a limiting instruction; it pertained to a trial court’s treatment of
 24 evidence on summary judgment and involved the use of verdicts from foreign trial proceedings to
 25 establish the identity of terrorist organizations involved in foreign terrorist attacks. *Strauss v. Credit*
 26 *Lyonnais, S.A.*, 925 F. Supp. 2d 414 (E.D.N.Y. 2013). It could hardly be less relevant to the
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28 ¹ Each undersigned Defendant joins this Reply only as to the cases in which it remains active.

1 circumstances of this case. Here, DAPs seek to use the SDI plea against Defendants who dispute
 2 that they participated in or benefited from the alleged conspiracy. Moreover, the specific facts that
 3 SDI admitted in its plea agreement may be wholly inapplicable, but certainly extremely prejudicial,
 4 to the other Defendants. Therefore, the SDI plea must not be admitted as to any of the other
 5 Defendants.

6 *Second*, if the SDI plea is admitted against SDI, a limiting instruction is necessary “to avoid
 7 the ‘danger’ of the jury using the plea for an improper purpose.” (Mot. at 3 (quoting *United States v.*
 8 *Halbert*, 640 F.2d 1000, 1006 (9th Cir. 1981)). The Federal Rules make clear that a court “must
 9 restrict” evidence admissible against a party or for a limited purpose “to its proper scope and instruct
 10 the jury accordingly.” Fed. R. Evid. 105.

11 As explained in the Advisory Committee Notes, “[a] close relationship exists between [Rule
 12 105] and Rule 403 which requires exclusion when ‘probative value is substantially outweighed by
 13 the danger of unfair prejudice, confusion of the issues, or misleading the jury.’” Fed. R. Evid. 105
 14 Advisory Committee’s Note (quoting Fed. R. Evid. 403). “Because evidence of a co-conspirator’s
 15 guilty plea is extremely prejudicial to the defendant on trial absent such an instruction, compliance
 16 with the mandatory duty imposed by Fed. R. Evid. 105 . . . is particularly important.” *United States*
 17 *v. Maliszewski*, 161 F.3d 992, 1004 (6th Cir. 1998) (internal quotations omitted); *see also United*
 18 *States v. Prawl*, 168 F.3d 622, 626 (2d Cir. 1999) (“Such an instruction is necessary because
 19 admission of a co-defendant’s guilty plea can be extremely prejudicial to the defendant, given the
 20 natural human tendency to assume that if an aider and abettor is guilty, the principal must also be
 21 guilty.” (internal quotations omitted)). The extreme risk of prejudice to the other Defendants here
 22 requires careful specification of the particular purposes for which the SDI plea may be admitted and
 23 an appropriate limiting instruction for the jury if the SDI plea is admitted against SDI. *See* Mot. at 4
 24 (proposed limiting instruction).

25 *Third*, the limiting instruction Defendants propose is appropriate under the circumstances.
 26 The DAPs agree with Defendants that Fed. R. Evid. 803(22)(C) “provides a limitation on the
 27 purpose for which Samung SDI’s guilty plea may be used” but propose a wholesale revision of the
 28 instruction. (DAP Opp. at 7). The DAPs’ proposed changes to the limiting instruction are improper

1 and unduly prejudicial to Defendants and, therefore, inconsistent with the Federal Rules of Evidence.
 2 The DAPs propose to depart from any type of standard form of jury instruction and instead suggest a
 3 lengthy recitation that they claim “specifies what facts Samsung SDI’s guilty plea are [sic] evidence
 4 of.” (DAP Opp. at 8). Their proposed limitation, however, egregiously includes “factual”
 5 information beyond what is set forth in the SDI Plea. [REDACTED]
 6 [REDACTED]
 7 [REDACTED] (Compare
 8 DAP Opp. at 7 with Ex. A to Barclay-Stobel Declaration). The flaws in the DAPs’ proposal make
 9 clear that Defendants’ proposed limiting instruction, as described in the underlying motion, hews
 10 closest to the Rules and is appropriate to avoid undue prejudice under the circumstances.

11 For the foregoing reasons, Defendants respectively request that this Court grant their motion
 12 *in limine* to exclude the SDI plea as to non-pleading defendants and to limit its use against SDI only
 13 to establishing those specific facts necessarily decided by the plea. If the plea is admitted,
 14 Defendants respectfully submit that the jury should be provided a limiting instruction—similar in
 15 form and substance to Defendants’ proposal—both at the time that the plea is introduced into
 16 evidence and in the Court’s final instructions at the conclusion of the trial.

18 DATED: March 6, 2015

Respectfully submitted,
KIRKLAND & ELLIS LLP

/s/ Eliot A. Adelson

Eliot A. Adelson (SBN 205284)
 James Maxwell Cooper (SBN 284054)
 555 California Street, 27th Floor
 San Francisco, CA 94104
 Telephone: (415) 439-1400
 Facsimile: (415) 439-1500
 Email: eadelson@kirkland.com
 Email: max.cooper@kirkland.com

James H. Mutchnik, P.C. (*pro hac vice*)
 Barack S. Echols (*pro hac vice*)
 300 North LaSalle
 Chicago, IL 60654
 Telephone: (312) 862-2000
 Facsimile: (312) 862-2200
 Email: jmutchnik@kirkland.com

Email: bechols@kirkland.com

*Attorneys for Defendants,
Hitachi, Ltd., Hitachi Displays, Ltd. (n/k/a Japan
Display Inc.), Hitachi America, Ltd., Hitachi Asia,
Ltd., and Hitachi Electronic Devices (USA), Inc.*

MUNGER, TOLLES & OLSON LLP

/s/ Miriam Kim

JEROME C. ROTH (SBN 159483)

jerome.roth@mto.com

MIRIAM KIM (SBN 238230)

miriam.kim@mto.com

MUNGER, TOLLES & OLSON LLP

560 Mission Street, Twenty-Seventh Floor

San Francisco, California 94105-2907

Telephone: (415) 512-4000

Facsimile: (415) 512-4077

BRAD D. BRIAN (SBN 079001)

brad.brian@mto.com

WILLIAM D. TEMKO (SBN 098858)

william.temko@mto.com

GREGORY J. WEINGART (SBN 157997)

gregory.weingart@mto.com

E. MARTIN ESTRADA (SBN 223802)

martin.estrada@mto.com

JESSICA BARCLAY-STROBEL (SBN 280361)

jessica.barclay-strobel@mto.com

MUNGER, TOLLES & OLSON LLP

355 South Grand Avenue, Thirty-Fifth Floor

Los Angeles, CA 90071-1560

Telephone: (213) 683-9100

Facsimile: (213) 687-3702

ROBERT E. FREITAS (State Bar No. 80948)

rfreitas@fawlaw.com

FREITAS ANGELL & WEINBERG LLP

350 Marine Parkway, Suite 200

Redwood Shores, California 94065

Telephone: (650) 593-6300

Facsimile: (650) 593-6301

Attorneys for Defendant LG Electronics, Inc.

WINSTON & STRAWN LLP

/s/ Jeffrey L. Kessler

1 JEFFREY L. KESSLER (*pro hac vice*)
2 JKessler@winston.com
3 ALDO A. BADINI (SBN 257086)
4 ABadini@winston.com
5 EVA W. COLE (*pro hac vice*)
6 EWCole@winston.com
7 MOLLY M. DONOVAN
8 MMDonovan@winston.com
9 **WINSTON & STRAWN LLP**
10 200 Park Avenue
11 New York, NY 10166
12 Telephone: (212) 294-6700
13 Facsimile: (212) 294-4700

9 STEVEN A. REISS (*pro hac vice*)
10 steven.reiss@weil.com
11 DAVID L. YOHAI (*pro hac vice*)
12 david.yohai@weil.com
13 ADAM C. HEMLOCK (*pro hac vice*)
14 adam.hemlock@weil.com
15 **WEIL, GOTSHAL & MANGES LLP**
16 767 Fifth Avenue
17 New York, New York 10153-0119
18 Telephone: (212) 310-8000
19 Facsimile: (212) 310-8007

16 *Attorneys for Defendants Panasonic Corporation*
17 *(f/k/a Matsushita Electric Industrial Co., Ltd.),*
18 *Panasonic Corporation of North America, and*
MT Picture Display Co., Ltd.

19 **SHEPPARD MULLIN RICHTER &**
20 **HAMPTON LLP**

21 /s/ Gary L. Halling
22 GARY L. HALLING (SBN 66087)
23 ghalling@sheppardmullin.com
24 JAMES L. MCGINNIS (SBN 95788)
25 jmcginnis@sheppardmullin.com
26 MICHAEL W. SCARBOROUGH (SBN 203524)
27 mscarborough@sheppardmullin.com
28 **SHEPPARD MULLIN RICHTER &**
HAMPTON LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111
Telephone: (415) 434-9100
Facsimile: (415) 434-3947

Attorneys for Defendants Samsung SDI America, Inc.; Samsung SDI Co., Ltd.; Samsung SDI (Malaysia) SDN. BHD.; Samsung SDI Mexico S.A. DE C.V.; Samsung SDI Brasil Ltda.; Shenzhen Samsung SDI Co., Ltd. and Tianjin Samsung SDI Co., Ltd.

GIBSON, DUNN & CRUTCHER LLP

/s/ Rachel S. Brass

JOEL S. SANDERS, SBN 107234
JSanders@gibsondunn.com
RACHEL S. BRASS, SBN 219301
RBrass@gibsondunn.com
AUSTIN SCHWING, SBN 211696
ASchwing@gibsondunn.com
555 Mission Street, Suite 3000
San Francisco, California 94105-2933
Telephone: 415.393.8200
Facsimile: 415.393.8306

FARMER BROWNSTEIN JAEGER LLP

WILLIAM S. FARMER, SBN 46694
WFarmer@FBJ-law.com
DAVID BROWNSTEIN, SBN 141929
DBrownstein@FBJ-law.com
JACOB ALPREN, SBN 235713
JAlpren@FBJ-law.com
235 Montgomery Street, Suite 835
San Francisco California 94104
Telephone 415.962.2876
Facsimile: 415.520.5678

Attorneys for Defendants Chunghwa Picture Tubes, Ltd and Chunghwa Picture Tubes (Malaysia) Sdn. Bhd.

SQUIRE PATTON BOGGS (US) LLP

/s/ Nathan Lane, III

Nathan Lane, III (CA Bar No. 50961)
Mark C. Dosker (CA Bar No. 114789)
SQUIRE PATTON BOGGS (US) LLP
275 Battery Street, Suite 2600
San Francisco, California 94111
Telephone: (415) 954-0200
Facsimile: (415) 393-9887
E-mail: nathan.lane@squiresanders.com

E-mail: mark.dosker@squiresanders.com

Donald A. Wall (Pro Hac Vice)
SQUIRE PATTON BOGGS (US) LLP
1 East Washington Street, Suite 2700
Phoenix, Arizona 85004
Telephone: + 1 602 528 4005
Facsimile: +1 602 253 8129
Email: donald.wall@squirepb.com

Attorneys for Defendant Technologies Displays Americas LLC with respect to all cases except OfficeDepot, Inc. v. Technicolor SA, et al. and Sears, Roebuck and Co., et al. v. Technicolor SA, et al.

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

/s/ Jeffrey I. Zuckerman

Jeffrey I. Zuckerman (Pro Hac Vice)
Ellen Tobin (Pro Hac Vice)
101 Park Avenue
New York, New York 10178
Telephone: 212.696.6000
Facsimile: 212.697.1559
Email: jzuckerman@curtis.com
etobin@curtis.com

Arthur Gaus (SBN 289560)
DILLINGHAM & MURPHY, LLP
601 California Street, Suite 1900
San Francisco, California 94108
Telephone: 415.397.2700
Facsimile: 415.397-3300
Email: asg@dillinghammurphy.com

Attorneys for Defendant Technologies Displays Americas LLC with respect to Office Depot, Inc. v. Technicolor SA, et al. and Sears, Roebuck and Co., et al. v. Technicolor SA, et al.

WHITE & CASE LLP

/s/ Lucius B. Lau

CHRISTOPHER M. CURRAN (*pro hac vice*)
ccurran@whitecase.com
LUCIUS B. LAU (*pro hac vice*)

1 alau@whitecase.com
2 DANA E. FOSTER (*pro hac vice*)
3 defoster@whitecase.com
4 **WHITE & CASE LLP**
5 701 Thirteenth Street, N.W.
6 Washington, DC 20005
7 Telephone: (202) 626-3600
8 Facsimile: (202) 639-9355

9 *Attorneys for Defendants Toshiba Corporation,*
10 *Toshiba America, Inc., Toshiba America*
11 *Information Systems, Inc., Toshiba America*
12 *Consumer Products, L.L.C., and Toshiba America*
13 *Electronic Components, Inc.*

14 **JENNER & BLOCK LLP**

15 /s/ Gabriel A. Fuentes

16 **JENNER & BLOCK LLP**
17 Charles B. Sklarsky (*pro hac vice*)
18 Terrence J. Truax (*pro hac vice*)
19 Michael T. Brody (*pro hac vice*)
20 Gabriel A. Fuentes (*pro hac vice*)
21 353 North Clark Street
22 Chicago, Illinois 60654-3456
23 Telephone: (312) 222-9350
24 Facsimile: (312) 527-0484
25 csklarsky@jenner.com
26 ttruax@jenner.com
27 mbrody@jenner.com
28 gfuentes@jenner.com

Brent Caslin (Cal. Bar. No. 198682)
JENNER & BLOCK LLP
633 West Fifth Street, Suite 3600
Los Angeles, California 90071
Telephone: (213) 239-5100
Facsimile: (213) 239-5199
bcaslin@jenner.com

Attorneys for Defendants Mitsubishi Electric
Corporation, Mitsubishi Electric US, Inc. and,
Mitsubishi Electric Visual Solutions America, Inc.

Pursuant to Local Rule 5-1(i)(3), the filer attests that concurrence in the filing of this document has been obtained from each of the above signatories.